

106TH CONGRESS
2D SESSION

H. R. 5326

To introduce common sense to America's policy regarding controlled substances.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2000

Ms. WATERS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To introduce common sense to America's policy regarding controlled substances.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Common Sense Drug Policy Act of 2000”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—MAJOR DRUG TRAFFICKING PROSECUTION

Sec. 101. Findings.

Sec. 102. Approval of certain prosecutions by Attorney General.

Sec. 103. Modification of certain sentencing provisions.

TITLE II—PROTECTION OF WOMEN IN PRISONS

Sec. 201. Protection of women inmates.

TITLE III—INCREASED FUNDING FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE IN FEDERAL PRISON SYSTEM

Sec. 301. Increased funding for prevention and treatment of substance abuse in Federal prison system.

Sec. 302. Authorization of appropriations.

TITLE IV—PROSECUTORIAL DATA COLLECTION

Sec. 401. Federal data.

Sec. 402. State data.

TITLE V—CLEAN START

Sec. 501. Expungement.

1 **TITLE I—MAJOR DRUG** 2 **TRAFFICKING PROSECUTION**

3 **SEC. 101. FINDINGS.**

4 Congress makes the following findings:

5 (1) Since the enactment of mandatory minimum
6 sentencing for drug users, the Federal Bureau
7 of Prisons budget has increased by more than 1,350
8 percent, from \$220,000,000 in 1986 to about
9 \$3,019,000,000 in 1997.

10 (2) Mandatory minimums have not reduced sen-
11 tencing discretion, but rather have transferred dis-
12 cretion from judges to prosecutors. Prosecutors, not
13 judges, have the discretion to drop or pursue a
14 charge, offer or withhold a plea bargain, reward or
15 deny a defendant's substantial assistance or coopera-
16 tion in the prosecution of someone else, and ulti-

1 mately, to determine the final sentence of the de-
2 fendant.

3 (3) African Americans comprise 12 percent of
4 the United States population, 15 percent of drug
5 users, 17 percent of cocaine users, but 33 percent of
6 all Federal drug convictions and 57 percent of Fed-
7 eral cocaine convictions.

8 (4) In 1986, before the mandatory minimums
9 for crack cocaine offenses became effective, the aver-
10 age Federal prison sentence for African Americans
11 was 11 percent higher than for whites. Following the
12 implementation of mandatory drug sentencing laws,
13 the average drug offense sentence for African Ameri-
14 cans was 49 percent higher than whites.

15 (5) The average dealer holds a low-wage job
16 and sells part time to obtain drugs for his or her
17 own use.

18 (6) According to a 1999 Justice Department re-
19 port, the amount of time spent in prison does not af-
20 fect recidivism rates.

21 **SEC. 102. APPROVAL OF CERTAIN PROSECUTIONS BY AT-**
22 **TORNEY GENERAL.**

23 A Federal prosecution for an offense under the Con-
24 trolled Substances Act, the Controlled Substances Import
25 and Export Act, or for any conspiracy to commit such an

1 offense, where the offense involves the illegal distribution
 2 or possession of a controlled substance in an amount less
 3 than that amount specified as a minimum for an offense
 4 under section 401(b)(1)(A) of the Controlled Substances
 5 Act (21 U.S.C. 841(b)(1)(A)) or, in the case of any sub-
 6 stance containing cocaine or cocaine base, in an amount
 7 less than 500 grams, shall not be commenced without the
 8 prior written approval of the Attorney General.

9 **SEC. 103. MODIFICATION OF CERTAIN SENTENCING PROVI-**
 10 **SIONS.**

11 (a) SECTION 404.—Section 404 of the Controlled
 12 Substances Act (21 U.S.C. 844) is amended—

- 13 (1) by striking “not less than 15 days but”;
 14 (2) by striking “not less than 90 days but”;
 15 (3) by striking “not less than 5 years and” and
 16 (4) by striking the sentence beginning “The im-
 17 position or execution of a minimum sentence”.

18 (b) SECTION 401.—Section 401(b) of the Controlled
 19 Substances Act (21 U.S.C. 841(b)) is amended.—

- 20 (1) in paragraph (1)(A)—
 21 (A) by striking “which may not be less
 22 than 10 years or not more than” and inserting
 23 “for any term of years or for”;
 24 (B) by striking “and if death” the first
 25 place it appears and all that follows through

1 “20 years or more than life” the first place it
2 appears;

3 (C) by striking “which may not be less
4 than 20 years and not more than life imprison-
5 ment” and inserting “for any term or years or
6 for life”;

7 (D) by inserting “imprisonment for any
8 term of years or” after “if death or serious bod-
9 ily injury results from the use of such substance
10 shall be sentenced to”;

11 (E) by striking the sentence beginning “If
12 any person commits a violation of this subpara-
13 graph”;

14 (F) by striking the sentence beginning
15 “Notwithstanding any other provision of law”
16 and the sentence beginning “No person sen-
17 tenced”;

18 (2) in paragraph (1)(B)—

19 (A) by striking “which may not be less
20 than 5 years and” and inserting “for”;

21 (B) by striking “not less than 20 years or
22 more than” and inserting “for any term or
23 years or to”;

1 (C) by striking “which may not be less
2 than 10 years or more than” and inserting “for
3 any term or years or for”;

4 (D) by inserting “imprisonment for any
5 term of years or to” after “if death or serious
6 bodily injury results from the use of such sub-
7 stance shall be sentenced to”;

8 (E) by striking the sentence beginning
9 “Notwithstanding any other provision of law”;
10 and

11 (3) in paragraph (1)(C)—

12 (A) by striking “of not less than twenty
13 years for more than” and inserting “for any
14 term of years or for”;

15 (B) by inserting “imprisonment for any
16 term or years or to” after “not more than 30
17 years and if death or serious bodily injury re-
18 sults from the use of such substance shall be
19 sentenced to”; and

20 (C) by striking the sentence beginning
21 “Notwithstanding any other provision of law”.

22 (c) SECTION 1010.—Section 1010(b) of the Con-
23 trolled Substances Import and Export Act (21 U.S.C.
24 960(b)) is amended—

25 (1) in paragraph (1)—

1 (A) by striking “of not less than 10 years
2 and not more than” and inserting “for any
3 term of years or for”;

4 (B) by striking “and if death” the first
5 place it appears and all that follows through
6 “20 years and not more than life” the first
7 place it appears;

8 (C) by striking “of not less than 20 years
9 and not more than life imprisonment” and in-
10 serting “for any term or years or for life”;

11 (D) by inserting “imprisonment for any
12 term of years or to” after “if death or serious
13 bodily injury results from the use of such sub-
14 stance shall be sentenced to”;

15 (E) by striking the sentence beginning
16 “Notwithstanding any other provision of law”
17 and the sentence beginning “No person sen-
18 tenced”;

19 (2) in paragraph (2)—

20 (A) by striking “not less than 5 years
21 and”;

22 (B) by striking “not less than twenty years
23 and not more than” and inserting “for any
24 term or years or for”;

1 (C) by striking “of not less than 10 years
2 and not more than” and inserting “for any
3 term or years or to”;

4 (D) by striking “if death or serious bodily
5 injury results from the use of such substance
6 shall be sentenced to life imprisonment”;

7 (E) by striking the sentence beginning
8 “Notwithstanding any other provision of law”
9 and the sentence beginning “No person sen-
10 tenced”; and

11 (3) in paragraph (3).—

12 (A) by striking “of not less than twenty
13 years and not more than” and inserting “for
14 any term of years or for”;

15 (B) by inserting “imprisonment for any
16 term or years or to” after “30 years and if
17 death or serious bodily injury results from the
18 use of such substance shall be sentenced to”;
19 and

20 (C) by striking the sentence beginning
21 “Notwithstanding any other provision of law”.

22 (d) SECTION 418.—Section 418 of the Controlled
23 Substances Act (21 U.S.C. 859) is amended by striking
24 the sentence beginning “Except to the extent” each place

1 it appears and by striking the sentence beginning “The
2 mandatory minimum”.

3 (e) SECTION 419.—Section 419 of the Controlled
4 Substances Act (21 U.S.C. 860) is amended—

5 (1) in subsection (a), by striking the sentence
6 beginning “Except to the extent” and by striking
7 the sentence beginning “The mandatory minimum”;
8 and

9 (2) in subsection (b)—

10 (A) by striking “by the greater of (A) a
11 term of imprisonment of not less than three
12 years and not more than life imprisonment or
13 (B) three times the maximum punishment au-
14 thorized by section 401(b) for a first offense”
15 and inserting “by imprisonment for any term of
16 years or for life”; and

17 (B)) by striking the sentence beginning
18 “Except to the extent”; and

19 (3) by striking subsection (d).

20 (f) SECTION 420.—Section 420 of the Controlled
21 Substances Act (21 U.S.C. 861) is amended—

22 (1) by striking the sentence beginning “Except
23 to the extent” each place it appears; and

24 (2) by striking subsection (e).

TITLE II—PROTECTION OF WOMEN IN PRISONS

SEC. 201. PROTECTION OF WOMEN INMATES.

Section 20105(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)(1)) is amended—

(1) in subparagraph (A), by striking “and” after the semicolon;

(2) in subparagraph (B), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(C) provide assurances, with accompanying documentation, to the Attorney General that the State has in effect policies that are monitored and enforced, in jails and correctional facilities throughout the State, that—

“(i) restrict the role of male employees with women inmates;

“(ii) prohibit male employees from supervising women inmates during showering and undressing;

“(iii) prohibit male employees from conducting body searches, ‘thorough’ pat searches, and frisks on women inmates ex-

1 cept in the case of an emergency or in the
2 presence of a female employee;

3 “(iv) address the health needs of
4 women inmates;

5 “(v) prohibit the use of shackles or
6 other restraints on pregnant women unless
7 it is shown to be absolutely necessary;

8 “(vi) provide additional protections to
9 women inmates who report violations of
10 this subparagraph to insulate them from
11 retaliatory acts;

12 “(vii) impose disciplinary action
13 against a jail or correctional facility em-
14 ployee who violates the provisions of this
15 subparagraph; and

16 “(viii) require that a male employee
17 who is found to have committed physical or
18 sexual misconduct against a woman inmate
19 is terminated;

20 “(D) provide documentation to the Attor-
21 ney General that jails and correctional facilities
22 throughout the State have—

23 “(i) instituted programs designed to
24 address prior victimization, drug and alco-

1 hol abuse, and high-risk drug and sexual
2 behaviors of women inmates;

3 “(ii) contracted with an outside cor-
4 rectional health care organization to regu-
5 larly assess the status of women’s health in
6 correctional settings;

7 “(iii) complied with national correc-
8 tional health care standards for screening,
9 classifying, and housing that ensure con-
10 tinuity of care for women inmates;

11 “(iv) implemented programs for crisis
12 intervention, suicide precaution, case man-
13 agement, and discharge planning for
14 women inmates; and

15 “(v) made a concerted effort to meet
16 nationally established standards that en-
17 sure the basic level of health care services
18 for women offenders; and

19 “(E) provide documentation to the Attor-
20 ney General that the State corrections depart-
21 ment has—

22 “(i) conducted a needs assessment of
23 minority health needs in correctional set-
24 tings; and

1 “(ii) analyzed its health services to
2 women inmates and classified the health
3 and security risk of each woman inmate.”.

4 **TITLE III—INCREASED FUNDING**
5 **FOR PREVENTION AND**
6 **TREATMENT OF SUBSTANCE**
7 **ABUSE IN FEDERAL PRISON**
8 **SYSTEM**

9 **SEC. 301. INCREASED FUNDING FOR PREVENTION AND**
10 **TREATMENT OF SUBSTANCE ABUSE IN FED-**
11 **ERAL PRISON SYSTEM.**

12 (a) IN GENERAL.—In carrying out section 4005 of
13 title 18, United States Code, the Attorney General (acting
14 through the Director of the Bureau of Prisons), in collabo-
15 ration with the Secretary of Health and Human Services
16 (acting through the Administrator of the Health Re-
17 sources and Services Administration), shall carry out a
18 program for the prevention and treatment of substance
19 abuse among individuals who are in Federal penal or cor-
20 rectional institutions and in the criminal custody of the
21 Attorney General.

22 (b) SPECIAL CONSIDERATION IN PROVISION OF
23 TREATMENT.—In providing treatment under subsection
24 (a), the officials specified in such subsection shall give spe-

1 cial consideration to individuals whose terms of criminal
2 custody are within 12 months of completion.

3 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS.**

4 For the purpose of carrying out section 1, there are
5 authorized to be appropriated \$250,000,000 for fiscal year
6 2001, and such sums as may be necessary for each of the
7 fiscal years 2002 through 2005. Such authorization is in
8 addition to any other authorization of appropriations that
9 is available for such purpose.

10 **TITLE IV—PROSECUTORIAL**
11 **DATA COLLECTION**

12 **SEC. 401. FEDERAL DATA.**

13 (a) IN GENERAL.—

14 (1) REQUIREMENT.—The Attorney General
15 shall establish a requirement, which shall be binding
16 on each Federal criminal prosecutor, that the race,
17 ethnicity, and gender of each person charged with a
18 Federal criminal offense prosecuted by the Depart-
19 ment of Justice, and where there are victims of the
20 offense each victim, be reported at each stage of the
21 prosecution to the Attorney General. In any case in
22 which an individual is offered a plea bargain, the de-
23 tails of the plea bargain shall be included.

1 (2) DEFINITION.—As used in this subsection,
2 the term “each stage of the prosecution” means at
3 each of the following stages:

4 (A) Arraignment.

5 (B) Charge, whether by information, in-
6 dictment, or otherwise.

7 (C) Plea.

8 (D) Trial.

9 (E) Disposition, whether conviction, ac-
10 quittal, or otherwise.

11 (F) Any decision not to prosecute or to
12 discontinue prosecution or reduce charges.

13 (b) REPORT TO CONGRESS.—The Attorney General
14 shall report annually to Congress the information obtained
15 under subsection (a).

16 **SEC. 402. STATE DATA.**

17 (a) IN GENERAL.—Section 503(a) of the Omnibus
18 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
19 3753(a)) is amended by adding at the end the following
20 new paragraph:

21 “(13) A certification that the State has in ef-
22 fect a requirement, which is binding on each crimi-
23 nal prosecutor of that State, that the race, ethnicity,
24 and gender of each person charged with a criminal
25 offense of that State, and where there are victims of

1 the offense each victim, is to be reported at each
2 stage of the prosecution (as defined in section 2 of
3 the Prosecutorial Data Collection Act of 2000) to
4 the Attorney General. In any case in which an indi-
5 vidual is offered a plea bargain, the details of the
6 plea bargain shall be included.”.

7 (b) REPORT TO CONGRESS.—The Attorney General
8 shall report annually to Congress the information obtained
9 pursuant to a requirement specified in section 503(a)(13)
10 of that Act (as added by subsection (a)).

11 **TITLE V—CLEAN START**

12 **SEC. 501. EXPUNGEMENT.**

13 (a) IN GENERAL.—Section 404 of the Controlled
14 Substances Act (21 U.S.C. 844) is amended by adding at
15 the end the following:

16 “(d) A person who has been convicted of an offense
17 under this section may obtain an order of expungement
18 from the court in which the conviction took place if, upon
19 motion, the convicted person shows—

20 “(1) the offense is an offense eligible for
21 expungement under this section that occurred 3
22 years or more before expungement is sought;

23 “(2) the convicted person has successfully com-
24 pleted a substance abuse rehabilitation program for
25 any substance abuse problems the person has; and

1 “(3) the convicted person has not been crimi-
2 nally convicted for any conduct that occurred after
3 the conviction for which expungement is sought.”.

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